STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor
Curt Fransen, Director

January 20, 2015

Ms. Kelly Urbanek, Chief
Regulatory Division
Walla Walla District
720 Park Boulevard, Suite 255
Boise, Idaho 83712

Subject: FINAL §401 Water Quality Certification for the 2014 Regional General Permit, Idaho (RGP-I)

Dear Ms. Urbanek:

The Idaho Department of Environmental Quality (DEQ) has reviewed the U.S. Army Corps of Engineers' Regional General Permit, Idaho (RGP-I) and has enclosed a final 401 certification for RGP-I. On December 17, 2014, a Draft RGP-I 401 Certification was posted on DEQ's website for a 21 day public comment period. DEQ received three comments from the following individuals:

1. Mike Settell, Sustainable Resource Solutions, received December 20, 2014
2. Bryan Hurlbutt, Attorney for Idaho Conservation League, received January 6, 2015
3. Sharon Keifer, Deputy Director of Idaho Department of Fish and Game, received January 6, 2015.

DEQ has reviewed these comments and developed a response to comments document. As a result DEQ has modified the 401 Certification. The following changes were made:

1. General Conditions, Condition 8. "If this project disturbs more than 1 acre and there is potential for discharge of stormwater to waters of the state, coverage under the EPA Stormwater Construction General Permit must be obtained. More information can be found at http://yosemite.epa.gov/R10/WATER.NSF/NPDES+Permits/Region+10+CGP+resources" was removed.
2. In-Water Work, Condition 8. "Activities that include constructing and maintaining intake structures in non-ESA-listed fish waters must include a fish screening devices with a minimum mesh size of1/4 inch (0.25 inches) to help minimize fish entrainment." was removed.

3. Fill Material Condition 1. now reads as, "Where sand is emplaced as fill material, the appropriate BMP shall be implemented that ensures the sand will not be easily dispersed (e.g., filter fabric anchored over the sand or otherwise confined)."
4. Fill Condition 2. now reads as, "Placement of fill material in existing vegetated wetlands is not authorized under this certification and may require an additional U.S. Army Corps of Engineers permit."
5. Erosion & Sediment Control Condition 9. added, "with native species, respectively" to the condition.
6. In-Water Work Condition 5. now reads as, "Activities in spawning areas must be avoided to the maximum extent practicable. Prior to the start of in-water work, the applicant shall contact the local Idaho Department of Fish and Game regional office to determine if spawning areas are present in the work area, and if so, the applicant will work with IDFG to determine an appropriate work window as to not disturb Spawning fish, incubating fish eggs or newly emerged fry. IDFG Field Offices can be found online at: http://fishandgame.idaho.gov/public/about/offices/."
7. In-Water Condition 8. (formerly Condition 9.) now reads as, " Stranded fish found in dewatered segments shall be moved to a location (preferably downstream) by a qualified fisheries biologist with credentials approved by the Idaho Department of Fish and Game. The applicant or qualified biologist will contact the local IDFG regional office to obtain a collection permit. Alternatively, the applicant may consult with IDFG to coordinate a fish salvage operation.
8. Vegetation Protection and Restoration Conditions 2. and 3. replaced the word 'should' with 'shall'.

Please find the enclosed final certification. Questions or comments regarding this certification should be directed to Stephen Berry at 208-373-0173 or via email: stephen.berry@deq.idaho.gov.

Sincerely,

Barry N. Burnell

Barry N. Burnell
Water Quality Division Administrator

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Enclosure

c: Duane E. Mitchell, USACE – Walla Walla District Office
DEQ Regional Administrators

Idaho Department of Environmental Quality

Final §401 Water Quality Certification

January 19, 2015

404 Permit Application Number: Army Corps of Engineers Regional General Permit – Idaho (RGP-I)

Project Location: Navigable waters as defined in Section 10 of the Rivers and Harbors Act of 1899 within the State of Idaho excluding portions of the Pend Oreille River and Lake Pend Oreille upstream of Albeni Falls Dam, reaches of the Pack and Clark Fork Rivers influenced by Lake Pend Oreille. The waters subject to this general permit are more specifically identified below in "Receiving Water Bodies."

Receiving Water Bodies: Bear Lake; Clearwater River - from the confluence with the Snake River upstream to River Mile 40.5 (mouth of the North Fork Clearwater River); North Fork Clearwater River - from the confluence with the Clearwater River including Dworshak Reservoir upstream to River Mile 57.9; Kootenai River from Bonners Ferry to the Canadian border; and, Snake River – from the Idaho/Washington border upstream to River Mile 445.5

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review activities receiving Section 404 dredge and fill permits and issue water quality certification decisions.

Based upon its review of the joint application for permit, received on October 1, 2014, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the activity will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

Project Description

This general permit is for the construction, repair or replacement of non-commercial piers and floating docks with a total deck area of 700 square feet or less for a single-use and 1,100 square feet for a joint-use pier or floating dock; the construction, repair or replacement of marine

launching rails; the construction, repair or replacement of mooring piles; and the construction, repair or replacement of portable boat lift stations.

Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- Tier 1 Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier 1 review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier 2 Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- Tier 3 Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier 1 protection for that use, unless specific circumstances warranting Tier 2 protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

Pollutants of Concern

The primary pollutant of concern for this project is sediment resulting from the backfilling of footings for piers and floating docks. As part of the Section 401 water quality certification, DEQ is requiring the applicant comply with various conditions to protect water quality and to meet Idaho WQS, including the water quality criteria applicable to sediment.

Receiving Water Body Level of Protection

For general permits issued on or after July 1, 2011, the Department will conduct an antidegradation review, including any required Tier II analysis, at the time at which general permits are certified. If supported by the permit record, the Department may also determine discharges authorized under a general permit are insignificant or that the pollution controls required in the general permit are the least degrading alternative as specified in IDAPA 58.01.02.052.08.c.

The proposed RGP-I provides coverage for activities occurring on certain waters identified by the Army Corps of Engineers as Navigable Waters of the United States as defined by Section 10 of the Rivers and Harbors Act. The waters covered include: Bear Lake; Clearwater River - from the confluence with the Snake River upstream to River Mile 40.5 (mouth of the North Fork Clearwater River); North Fork Clearwater River - from the confluence with the Clearwater River including Dworshak Reservoir upstream to River Mile 57.9; Kootenai River from Bonners Ferry to the Canadian border; and, Snake River - from the Idaho/Washington border upstream to River Mile 445.5

The covered waters include waters that are afforded Tier 1 and Tier 2 protection. Therefore, DEQ must conduct both a Tier 1 and Tier 2 antidegradation review of the RGP-I.

Protection and Maintenance of Existing Uses (Tier 1 Protection)

As noted above, a Tier 1 review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. The general (non-numeric) effluent limitations in the RGP-I addresses best management practices aimed at minimizing impacts to the aquatic environment, especially sediment and turbidity impacts including: shoreline and riverbank vegetation protection and restoration, erosion and sediment controls, soil stabilization requirements, pollution prevention measures, prohibited discharges and wildlife considerations. Much of the excavation and fill work with respect to piers, floating docks, launching rails and mooring piles must be done in the dry, therefore minimizing any effect to surface waters. In addition, DEQ has included conditions that ensure compliance with WQS relevant to sediment. The RGP-I does not contain specific (numeric) effluent limitations for sediment or turbidity.

The numeric and narrative criteria in the WQS are set at levels that ensure protection of designated beneficial uses. The provisions in the RGP-I and the conditions in the certification ensure WQS for sediment will be met. Therefore, the RGP-I will protect existing and designated beneficial uses in compliance with the Tier 1 provisions of Idaho WQS.

High-Quality Waters (Tier 2 Protection)

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to aquatic life use including salmonid spawning and contact recreation uses of the receiving water body (IDAPA 58.01.02.052.06). The pollutant of concern is sediment.

A Tier II analysis will only be conducted for activities or discharges, subject to a permit or a license, that cause degradation. If degradation is determined to be insignificant, then no further Tier II analysis for other source controls (Subsection 052.08.b.), alternatives analysis (Subsection 052.08.c.), or socioeconomic justification (Subsection 052.08.d.) is required.

Where footings are used for piers, floating docks and marine launching rails, the RGP-I requires the excavation and filling to be conducted in the dry during low flow conditions; neither open cell polystyrene (beaded Styrofoam) nor the reuse of industrial drums are allowed for floating docks.

Furthermore, no more than eight (8) linear feet of shoreline vegetation shall be disturbed at the access point to the pier or dock.

Where in-water pile driving is performed (i.e. for open-pile piers and mooring piles), the maximum size of steel piles shall be ten (10) inches and 18 inches for wood piles; a bubble curtain and a wood, rubber or synthetic cushion block between the driving apparatus and the pile are to be utilized. These requirements ensure a small footprint of disturbance relative to the size of the water body and that no fill material or metal fragments will enter waters of the State.

Marine launching rails shall be constructed in the dry during low water conditions; where minor dredging or backfilling is required, these activities must comply with previously certified NWP 18 and 19.

Additionally, DEQ finds that all cost-effective and reasonable best management practices are required by the RGP-I for nonpoint source control.

Degradation may be determined to be insignificant when the cumulative decrease in assimilative capacity is equal to or less than ten percent (IDAPA 58.01.02.052.08.a.). Based upon the nature of the pollutant involved (i.e. sediment), the review of the aforementioned RGP-I conditions that will prevent or minimize any chance of increased sediment, the short term nature of the activities authorized and the relative size of the receiving water bodies, the Department has determined that any potential reduction in assimilative capacity will be equal to or less than ten percent.

To the extent there is an increase in sediment as a result of authorized activities that could be characterized as degradation, the Department has determined the level of degradation will be insignificant. Therefore, a Tier 2 analysis is not required for activities permitted under RGP-I.

Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

General Conditions

1. This certification is conditioned upon the requirement that any modification (e.g., change in BMPs, work windows, etc.) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.
2. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that, due to changes in relevant circumstances—including without limitation, changes in project activities, the characteristics of the receiving water bodies, or state WQS—there is no longer reasonable assurance of compliance with WQS or other appropriate requirements of state law.
3. If ownership of the project changes, the certification holder shall notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to

another person or party. The new owner/operator shall request, in writing, the transfer of this water quality certification to his/her name.

4. A copy of this certification must be kept on the job site and readily available for review by any contractor working on the project and any federal, state, or local government personnel.
5. Project areas shall be clearly identified in the field prior to initiating land-disturbing activities to ensure avoidance of impacts to waters of the state beyond the project footprint.
6. The applicant shall provide access to the project site and all mitigation sites upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.
7. The applicant is responsible for all work done by contractors and must ensure the contractors are informed of and follow all the conditions described in this certification and the Section 404 permit.
8. Portable Boat Lift Stations shall be emplaced and operated in a manner that precludes any discharge to waters of the State.

Fill Material

1. Fill material shall be free of organic and easily suspendable fine material. The fill material to be placed shall be native material, concrete, sand, gravel, grout or epoxy. Where sand is emplaced as fill material, the appropriate BMP shall be implemented that ensures the sand will not be easily dispersed (e.g., filter fabric anchored over the sand or otherwise confined).
2. Fill material shall not be placed in a location or in a manner that impairs surface or subsurface water flow into or out of any wetland area. Placement of fill material in existing vegetated wetlands is not authorized under this certification and may require an additional U.S. Army Corps of Engineers permit.
3. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.
4. Excavated or staged fill material must be placed so it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled.

Erosion and Sediment Control

1. BMPs for sediment and erosion control suitable to prevent exceedances of state WQS shall be selected and installed before starting construction at the site. One resource that may be used in evaluating appropriate BMPs is DEQ's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties*, available online at http://www.deq.idaho.gov/media/494058-entire.pdf. Other resources may also be used for selecting appropriate BMPs.
2. One of the first construction activities shall be placing permanent and/or temporary erosion and sediment control measures around the perimeter of the project or initial work areas to protect the project water resources.

3. Permanent erosion and sediment control measures shall be installed in a manner that will provide long-term sediment and erosion control to prevent excess sediment from entering waters of the state.
4. Permanent erosion and sediment control measures shall be installed at the earliest practicable time consistent with good construction practices and shall be maintained as necessary throughout project operation.
5. Structural fill or bank protection shall consist of materials that are placed and maintained to withstand predictable high flows in the waters of the state.
6. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
7. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
8. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
9. Disturbed areas suitable for vegetation shall be seeded or revegetated with native species respectively, to prevent subsequent soil erosion.
10. Maximum fill slopes shall be such that material is structurally stable once placed and does not slough into the stream channel during construction, during periods prior to revegetation, or after vegetation is established.
11. To the extent reasonable and cost-effective, the activity submitted for certification shall be designed to minimize subsequent maintenance.
12. Sediment from disturbed areas or able to be tracked by vehicles onto pavement must not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the state. Placement of clean aggregate at all construction entrances or exits and other BMPs such as truck or wheel washes, if needed, must be used when earth-moving equipment will be leaving the site and traveling on paved surfaces.

In-water Work

1. Work in open water is to be kept at a minimum and only when necessary. Equipment shall work from an upland site to minimize disturbance of waters of the state. If this is not practicable, appropriate measures must be taken to ensure disturbance to the waters of the state is minimized.
2. Construction affecting the bed or banks shall take place only during periods of low flow.
3. Fording of the channel is not permitted. Temporary bridges or other structures shall be built if crossings are necessary.
    a. Temporary crossings must be perpendicular to channels and located in areas with the least impact. The temporary crossings must be supplemented with clean gravel or treated with other mitigation methods at least as effective in reducing impacts. Temporary crossings must be removed as soon as possible after the project is completed or the crossing is no longer needed.
4. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.

5. Activities in spawning areas must be avoided to the maximum extent practicable. Prior to the start of in-water work, the applicant shall contact the local Idaho Department of Fish and Game regional office to determine if spawning areas are present in the work area, and if so, the applicant will work with IDFG to determine an appropriate work window as to not disturb Spawning fish, incubating fish eggs or newly emerged fry. IDFG Field Offices can be found online at: http://fishandgame.idaho.gov/public/about/offices/ .
6. Work in waters of the state shall be restricted to areas specified in the application.
7. Measures shall be taken to prevent wet concrete from entering into waters of the state when placed in forms and/or from truck washing.
8. Stranded fish found in dewatered segments shall be moved to a location (preferably downstream) by a qualified fisheries biologist with credentials approved by the Idaho Department of Fish and Game. The applicant or qualified biologist will contact the local IDFG regional office to obtain a collection permit. Alternatively, the applicant may consult with IDFG to coordinate a fish salvage operation.
9. To minimize sediment transport, stream channel or stream bank stabilization must be completed prior to returning water to a dewatered segment.

Vegetation Protection and Restoration

1. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
2. To the maximum extent practical, staging areas and access points shall be placed in open, upland areas.
3. Fencing and other barriers shall be used to mark the construction areas.
4. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
5. If authorized work results in unavoidable vegetative disturbance, riparian and wetland vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved at the completion of authorized work.

Dredge Material Management

1. Upland disposal of dredged material must be done in a manner that prevents the material from re-entering waters of the state.

Management of Hazardous or Deleterious Materials

1. Petroleum products and hazardous, toxic, and/or deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the state. Adequate measures and controls must be in place to ensure that those materials will not enter waters of the state as a result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.
2. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
3. Daily inspections of all fluid systems on equipment to be used in or near waters of the state shall be done to ensure no leaks or potential leaks exist prior to equipment use. A log book of these inspections shall be kept on site and provided to DEQ upon request.

4. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
5. Equipment and machinery shall be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment prior to entering a water of the state. Any wastewater or wash water must not be allowed to enter a water of the state.
6. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
7. In accordance with IDAPA 58.01.02.850, in the event of an unauthorized release of hazardous material to state waters or to land such that there is a likelihood that it will enter state waters, the responsible persons in charge must
   b. Make every reasonable effort to abate and stop a continuing spill.
   c. Make every reasonable effort to contain spilled material in such a manner that it will not reach surface or ground waters of the state.
   d. Immediately notify DEQ of the spill by calling the Idaho State Communications Center at 1-800-632-8000.
   e. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.
8. In accordance with IDAPA 58.01.02.851.04, any aboveground spill or overfill of petroleum that results in a release that exceeds 25 gallons *or that causes a sheen on a nearby surface water* shall be reported to DEQ within 24 hours and corrective action in accordance with IDAPA 58.01.02.852 shall be taken.
9. In accordance with IDAPA 58.01.02.851.04, any aboveground spill or overfill of petroleum that results in a release less than 25 gallons *and does not cause a sheen on nearby surface water* shall be reported to DEQ by calling the Idaho State Communications Center at 1-800-632-8000 if cleanup cannot be accomplished within 24 hours.
10. Any release that causes a sheen (of any size) in waters of the state must be reported *immediately* to the National Response Center at 1-800-424-8802 and DEQ by calling the Idaho State Communications Center at 1-800-632-8000.

Treated Wood

1. Any use of treated wood materials in the aquatic environment must be conducted in accordance with DEQ's "Guidance for the Use of Wood Preservatives and Preserved Wood Products In or Around Aquatic Environments." This guidance is available online at http://www.deq.idaho.gov/media/488795-wood_products_guidance_final.pdf.

Required Notification

Individuals who want to construct an activity described in the RGP-I shall submit the information listed in RGP-I Sections VI. B, C and D to:

Idaho Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706
Attention: 401 Program Coordinator

Right to Appeal Final Certification

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the "Rules of Administrative Procedure before the Board of Environmental Quality" (IDAPA 58.01.23), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to Stephen Berry at (208) 373-0173 or via email at stephen.berry@deq.idaho.gov .

Barry N. Burnell

Barry N. Burnell
Water Quality Division Administrator